Low Yoke Ying & Anor v Sim Kok Lee & Ors

HIGH COURT (SINGAPORE) — SUIT NO 4373 OF 1983
YONG PUNG HOW CJ
17 DECEMBER 1990

Tort — Negligence — Collision between lorry and motor car — Whether accident resulted from negligence of lorry driver or negligent repair work by repairers — Liability for damages

Damages (Personal Injury or Death) — Fatal accident — Award to estate for lost years taking account of promotion — Claim for loss arising out of benefit of pension, gratuity and CPF — Principles applicable — Civil Law Act (Cap 30, 1970 Ed), ss 8, 9, 12(4) & 14(1)

Road Traffic — Collision between lorry and motor car — Whether accident resulted from lorry driver's negligence or repairer's negligence — Liability for damages

The deceased, aged 32, was killed when a lorry veered onto his side of the road and collided into his motor car. The lorry was owned by the third defendants and was driven by their employee, the first defendant. The second defendants were motor repairers who had attended to the lorry. The first defendant said that the steering system had failed while he was driving the lorry, thus resulting in the collision. He claimed that he was travelling at 30 km/h just before the accident, and that the relatively slow speed was because of the speed regulating strips on the road. After the collision, he called the second defendants and one of their servants or agents came to the scene of the accident. The third defendants alleged that the steering had failed due to faulty and negligent repair work done by the second defendants to the steering. The second defendants submitted that they had carried out their work properly but that the steering system had failed due to mechanical failure beyond their control. An action was commenced by the deceased's administrators for damages for the benefit of his estate and his dependants. In addition to the usual claims, the plaintiffs also claimed a lump sum of $120,000 in respect of loss arising out of the benefit of the pension, gratuity and CPF which the deceased might have been entitled to by serving as a lieutenant in the Singapore Armed Forces.

Held, allowing the plaintiffs' claim:

(1) The lorry could not have been driven before the accident for some five hours and some 80km relying on the 'jamming effect' alone, ie that two crucial parts of the steering system, the drag link and the drop arm, had not been properly reconnected together when the lorry left the second defendants' workshop but had merely been 'jammed together'. Neither could the court find that the drag link and the drop arm were somehow forced apart, and thereby resulted in the steering failing.

(2) The nut and the split pin were found to be missing after the collision, and the only logical inference to draw was that the nut and split pin were removed after the collision. It was not disputed that it would take an ordinary person only five minutes or so to remove the nut, and a mechanic would take less than that time if the right tools were available. The appropriate tools were in fact available in the lorry itself. On the evidence it was found that the servant or agent of the second defendants who arrived at the scene of the accident removed the nut and pin, and disconnected the drag link and drop arm. He could have done this to avoid any suggestion that he had not carried out the repairs properly; more likely, because a person had been killed, and he wanted to protect their customer and show that the accident was the result of some mechanical failure.

(3) On the evidence, the first defendant was negligent in causing the accident, and the third defendants are vicariously negligent and liable in damages to the plaintiffs. The first defendant's claim that there were speed regulating strips on the road was contradicted by the police, and the police sketch plan showed very long brake marks of 10.3m and 12.1m which in the circumstances at the time suggested a violent and desperate braking at a very considerable speed, well in excess of the maximum speed limit of 50 kmph. There could be no explanation for these brake marks other than the very considerable speed at which the lorry was travelling when the brakes were applied, as the lorry was not loaded at that time. From these marks, the lorry appeared to have veered first to the left, and then to the right, and finally to have come to a stop only when it hit the motor car of the deceased, leaving long brake marks. When the first defendant realized that the lorry was veering to the left because of the speed, and was about to hit the curb on the left, he swerved the steering to the right, applied the brakes, and lost control.

(4) As to the estate's claim for damages, since there was no evidence as to whether the deceased was conscious or unconscious after the accident and before he was pronounced dead about an hour later, no award was made for pain and suffering. $7,000 was awarded for loss of expectation of life. For loss of future earnings in lost years, the award should take into account of the deceased being promoted, so it would be fairer to base this on a retirement rank of Major, rather than the rank of Captain or Lieutenant-Colonel on the evidence available. Calculation on the median of his pay is therefore based at the date of the accident of $1,216.98 and a major's pay on retirement of $4,055 to arrive at the figure for his probable lost earnings. After making deductions for income tax, adding back the employer's CPF contributions, and taking an available surplus of 40%, the multiplier of 14 has been applied to the resulting multiplicand, with the rounded up figure of $215,000 for loss of future earnings.

(5) As to the dependants' claim, some allowance must be made for increases in his take-home pay in the period between his death and the date of judgment following trial, and an average figure of $1,000 per month is a fair assessment of the loss of pre-trial dependency. This will amount to about 117 months or about $117,000. Estimating future loss of support involves taking into account his promotion prospects and resultant increased earnings, the proportion of his earnings which he has been giving to his dependants, and the fact that the two children were born in 1977 and 1981. Future loss of support is assessed at $1,500 per month with a multiplier of 7, amounting to $126,000.

(6) With regard to the claim for loss arising out of the benefit of pension, gratuity or CPF, it appears that in principle, if a claim can be proved, there appears to be no reason why the estate should not be allowed to claim for loss of pension right, or why the dependants should not also be entitled to claim for any loss of support which they would have derived from a pension, gratuity or other post-retirement income which the deceased would have received, had he not been killed. For a claim to succeed, the plaintiff must discharge the burden of proof required, so that at the least the claim will not be considered to be too remote and speculative.

(7) The grant of a pension, gratuity or other allowance to the deceased would have been entirely in the discretion of the

Armed Forces Council. This being so, there would have been no right or entitlement to a pension or gratuity vested in the deceased which would have enabled the personal representatives to base a claim against a tortfeasor either on behalf of the estate or for the benefit of the dependants. A claim to a pension at the age of 50 in respect of a 32-year old lieutenant in the Commandos would simply have been too remote and speculative. As there was no acceptable evidence before the court by which any loss of pension or gratuity could be capable of being estimated, no award was made under this head.

(8) On the loss of employers' CPF contribution, it is for the plaintiffs to prove the loss of such contributions and their quantum. It is not for the court to take on the primary responsibility of making the calculations which would be necessary to quantify any such loss. In the present case, the claim for the loss of the employers' CPF contributions was in fact lumped into the composite figure of '120,000 for pension, gratuity and CPF', which appeared to have been submitted more in hope than in conviction. As it has not been possible in this case to arrive at any reliable figures on the evidence before the court, no award was made under this head.

(9) As the dependants are also the same beneficiaries of the estate, the awards to them as dependants will be reduced in each case by the respective amounts received through the estate as beneficiaries. Special damages should be paid to the widow. For the purpose of complying with s 12(4) of the Civil Law Act, the damages awarded in respect of the dependants' claim should be divided as to two-thirds to the widow and as to one-sixth to each of the two children, for whom the widow rather than the Public Trustee shall hold in trust.

Cases referred to

1 *Parvathy* v *Liew Yoke Khoon* [1984] 1 MLJ 183 (refd)
2 *Singapore Bus Service (1978) Ltd* v *Lim Soon Yong* [1985] 2 MLJ 267 (refd)
3 *Lee Wee Hiong & Ors* v *Victor Koh Ai Sai & Ors* [1990] 1 MLJ 340 (refd)
4 *Lai Chi Kay & Ors* v *Lee Kuo Shin* [1981] 2 MLJ 167 (refd)
5 *Nani* v *WG Williams* [1986] 2 MLJ 68 (refd)
6 *Mariayee & Anor* v *Mohamed Nasir & Anor* [1985] 1 MLJ 427 (refd)
7 *Chan Heng Wah & Anor* v *Peh Thiam Choh & Anor* [1986] 2 MLJ 175 (refd)

Legislation referred to

Civil Law Act (Cap 30, 1970 Ed) ss 8, 9, 12(4), 14(1)
Singapore Armed Forces Pensions Regulations 1978 regs 3, 4

Karuppan Chettiar (*Dr Myint Soe* with him) for the plaintiffs.
TS Tan for the first and second defendants.
Yeo Kee Chin for the second defendants.

Cur Adv Vult

Yong Pung How CJ: On 17 March 1981 at about 2.45pm Chan Kong Hwa alias A Wa ('the deceased') was driving his motor car on his side of Tampines Road, when a lorry veered on to his road and collided with his motor car. At 3.45pm on the same day he died from the injuries which he received. The lorry was owned by the third defendants, Eng Bee & Co Pte Ltd, and was driven at the time by the first defendant, Sim Kok Lee, in the course of his employment with the third defendants. The second defendants, Boon Yam & Co, were motor repairers who were the regular repairers for the third defendants' vehicles and had also attended to the lorry in question. This action under the Civil Law Act (Cap 30, 1970 Ed) was brought by the plaintiffs as the administratrix and co-administrator of the deceased's estate for the benefit of the estate and his dependants.

Liability

At the trial, six witnesses gave evidence for the plaintiffs, and a total of seven witnesses for the defendants. In his defence, the first defendant (DW2) said that he had been employed by the third defendants as a lorry attendant since 1973. In January 1980 he had become a lorry driver and had been assigned to drive this lorry. After the accident, he had ceased to be a driver, and was now a storekeeper. On Saturday 14 March 1981, some three days before the accident, he said that he found the steering of his lorry to be very heavy and reported the matter to his supervisor, Tay Kim Beng (DW5). He was instructed to send the lorry to the second defendants for the necessary repairs. He had had many occasions in the past to take the lorry to them for various purposes and, up to that date, had done so on more than ten occasions. At the second defendants' premises, he explained the problem to one Ah Yam and left the lorry there for the problem to be attended to.

On Monday 16 March 1981 at about 5pm he took back the lorry after being told by Ah Yam that the problem had been attended to. As this was already in the late afternoon, he drove the lorry to his home and parked it overnight in an HDB car park. On the following day, the lorry was driven by him for a considerable distance: first, he drove it to his employer's store in Geylang and carried a load of building materials from the store to a customer in King George's Avenue near the employer's office; from there he drove it to the office to collect a delivery order for a second load; then he drove it again to the store, collected the load, and delivered it to a customer in Woodlands; finally, he drove the lorry back, this time unladen, towards the store, in the course of which the accident took place. He confirmed a statement which he had made at the earlier in the coroner's court, that he was on the road for about five hours that day and covered a total distance of about 80km before the accident.

The first defendant's evidence on the cause of the accident was in effect that the steering failed suddenly. Just before this happened, he was driving normally along a two-way stretch of road, on his own side of the road, and at a speed of no more than 20 to 30 km/h, because there were speed regulating strips on the road surface. He recalled that he felt the road surface to be uneven as he drove over the strips, but in spite of this the lorry was moving normally. After he had passed the strips and was some five lorry-lengths beyond them, the lorry

suddenly went out of control. He said that he shouted to his lorry attendant that the steering was not working. He jammed on his brakes. He was still on his own side of the road, but the lorry went over to the other side and collided with an oncoming motor car driven by the deceased.

After the collision, he got down from his lorry. He went to a telephone kiosk and made three telephone calls: for an ambulance; to his supervisor, Tay Kim Beng, to inform him of the accident; and to Ah Yam when he asked Ah Yam why the steering had failed. According to him, Ah Yam said he would go to the scene and have a look. The accident happened at about 2.45pm. He said that he was away from the scene to make his telephone calls for about 10 minutes and got back to the scene at about 2.55pm or 3pm. A police officer, not the Inspector whom he saw later, was there. He did not remove anything from the lorry, and did not see anyone else remove anything. According to him, there were no tools in the lorry, apart from a screwdriver.

The lorry attendant, Lim Kow Nee (DW3), was not particularly helpful as a witness. While he substantially corroborated the first defendant's evidence in respect of the delivery of goods to customers on that day, he was confused about the circumstances at the time of the collision. Of particular interest, he said that at the time of the collision he heard the first defendant say, 'Die, no steering'. Under cross-examination, he was not sure whether these words were said before or after the collision, although he had said at the earlier inquiry that he heard this said a few moments before the collision.

Inspector Roger Yeo Kong (PW4), an officer attached to the Traffic Police in March 1981, arrived at the scene of the accident at 4.38pm on 17 March 1981. He said in evidence at the inquiry on 31 July 1981 that he found, among other things, that the steering drag link of the lorry was disconnected from the drop arm, and the nut securing the two parts together was missing. The lorry was sent at 5.30pm on the same day to the Force Transport Branch, where it was placed in a fenced and guarded compound. It was examined there on 21 March 1981 by Foo Yin Fatt (PW3), an engineer attached to the Force Transport Branch of the Singapore Police Force. Following his examination he reported that the speedometer, the handbrake and the footbrakes were in order, and the tyres were in serviceable condition; but he also reported that the drag link and the drop arm, both of which were component parts of the steering system of the lorry, were disconnected. The disconnection, in his opinion, made it impossible to steer the lorry.

Tong Teck Tiong (DW1), a director of the third defendants, old the court that his company had dealt in building materials since 1964. To deliver them to customers, the company had its own fleet of lorries. In 1981 there were six lorries in the fleet. The company did not have a service department of its own, however, and for some ten years before the accident had been sending its vehicles to the second defendants for servicing and for repairs. This included preparing the company's lorries for the periodical examinations by officers of the Registry of Vehicles. The company had been happy with the services provided by the second defendants and had no complaints. Even after the accident and up to the date of the trial, the company's standing instructions were still to send all the lorries to the second defendants. The second defendants billed the company each time for work done. They sent an invoice for $91 for repairs done on 16 March 1981 to the lorry in question before the accident. This invoice had been paid in cash and had then been entered in the cash book of the company.

Cheng Kuang Bong, (DW6), a motor mechanic who in 1981 was also one of the two partners of the second defendants, Boon Yam & Co, who are sued as a firm in this action, gave evidence. (He appeared to be the same person who was referred to by the first defendant at various times in his evidence as Ah Boon and as Ah Yam.) He said in his evidence that the lorry was sent to them for repairs at about 4pm on Saturday 14 March 1981, at which time the first defendant complained that the steering was stiff. This being late in the afternoon on a Saturday, he told the first defendant to leave the lorry with him and to come back for it after the weekend on the following Monday, 16 March 1981. On the Monday morning, he did repair work on the lorry for some two hours, during which the steering system was repaired. He found that there was no oil in it which was the cause of the stiffness in the steering. Under cross-examination he confirmed that the shortage of oil was something which would only take five or ten minutes to remedy. He claimed that he also changed the drag link. This involved disconnecting the drag link from the drop arm so as to fit on the new drag link. To do the reconnection he used a special 'nyloc' nut which could not come loose. He did not use a split pin because there was no provision for a split pin in the new drag link which he used. After the repairs, the lorry was jacked up. He manoeuvred the steering to assure himself that it was now in order, but he did not test-drive the lorry. Later that day, at about 5pm the first defendant came to the workshop and took back the lorry.

Cheng Kuang Bong said that it was Tay Kim Beng (DW5), the supervisor, who telephoned him between 2.35pm and 2.45pm on 17 March 1981 and told him about the accident. Tay Kim Beng told him to go to the scene and take a look. He got there about 10 to 15 minutes after receiving the call, before the police ar-

rived. The first defendant was also not there, and only came back to the scene some time later. When he examined the lorry after he arrived at the scene, he found that the drag link and the drop arm were disconnected. He did not see the nut which he had fitted on, and he was unable to account for its absence. He agreed that it was not his practice to go to the scene of an accident; he went on this occasion only because Tay Kim Beng had asked him to go, and as the steering had been repaired by him and the driver had complained that the steering had failed at the time time of the accident. He said that, when he examined the lorry at the scene of the accident, he did not disconnect the drag link and the drop arm.

Denis Packard (DW7), a qualified automotive mechanical engineer, was called by the first and third defendants as an expert witness to support the evidence of the first defendant. He had previously submitted a written report to suggest that the first defendant's account was entirely possible. In his opinion, the heavy steering could have been caused by lack of oil, because the oil in the system could have leaked past the seals. The real thrust of his evidence, however, was to cast doubt on the work done by the repairers and to suggest that, in reconnecting the drag link to the drop arm, the repairers had by an oversight omitted to put on a nut to secure the two parts together, but had merely slid the drag link tapered end into the corresponding drop arm taper. This created what he explained at every considerable length as a jamming effect. The single impact of a relatively minor hammer or a large spanner would cause further jamming at the taper. In this condition a vehicle could be driven without the driver having any indication of looseness in the steering because there was no looseness at the taper until it broke free of itself. However, once the taper jamming broke, the parts would probably disconnect altogether in a very short space of time, perhaps in a few seconds. It was possible for the drag link to 'pop-out' entirely from its taper-jammed position in a single action. For the driver, there would be an almost instantaneous deterioration from full steering control to no steering control at all. In his opinion, it was possible that when the vehicle went through the speed regulating strips or other rough surface irregularities, the taper jamming effect between the two parts came adrift. When this happened and the brakes were applied, the vehicle could have skidded in a straight ahead fashion or it could just as likely have deviated.

Under cross-examination, Denis Packard admitted that he would not be happy driving a vehicle without a nut in place to secure together the drag link and drop arm and just rely on the jamming effect alone, although the real security would be in the taper, and any nut or pin would only be a secondary consideration. On being shown in court the enlargements of the photographs of the steering system in the lorry, he expressed the opinion that the drag link in the enlargements (which he called the tie-rod end) was clearly not new, that there was provision for a split pin, and that the thread on the shank could be seen through a magnifying glass, although it looked worn. He also agreed that if the drag link had not been replaced, the alleged repairs could not have been done, and the question of whether the second defendants as repairers had put in a nut or had omitted to put in a nut did not arise.

The defence of the first and third defendants was therefore that the cause of the accident was the failure of the steering system. When this failed, the first defendant had no control over the lorry, which veered on to the wrong side of his road despite attempts by him to control it, and it then collided into the oncoming motor car driven by the deceased. This failure of the steering system resulted from the drag link and the drop arm becoming disconnected. Both these parts had not been properly reconnected together when the lorry left the workshop of the second defendants but had merely been 'jammed together'. The parts had held together in this way only up to the time when the first defendant found that he no longer had control over the steering. That was when these parts came adrift. Up to then they were joined by the jamming effect alone.

Lew Chan Phon (PW6), another qualified automotive mechanical engineer, was called by the plaintiffs as an expert witness. He was forthright in dismissing the 'jamming effect' theory. Under cross-examination by counsel for the first and third defendants, he said he was convinced that with only the jamming effect and without a nut to secure the drag link to the drop arm, it would have been impossible for the vehicle to travel in the town. Certainly, the jamming effect would not have lasted the five hours and the 80km which the lorry travelled on the day of the accident. Under cross-examination by counsel for the second defendants, he maintained this view.

As the evidence then unfolded, it was suggested by counsel for the plaintiffs that two questions emerged over the repairs to the lorry. First, how were the repairs carried out by the second defendants on the day before the accident and were these repairs carried out properly? According to Cheng Kuang Bong (DW6), he not only put in some oil, but also changed the entire drag link set and fixed the two parts together with a special 'nyloc' nut which could not have come loose. He did not put in a split pin because there was no provision for a split pin in the part which he used. The thrust of the arguments of the first and third defendants, however, was that the second defendants never did the repairs which they claimed to have done, that they probably only replenished the oil and changed the seal, and in the process of reconnecting the drag-link and drop arm omitted or failed to put in a nut and a split pin. As

evidence of this, they brought in another expert witness, Yan Fook Sum (DW4), an assessor and surveyor who was instructed by the insurance company to inspect the damaged lorry and who said in his evidence that the thread of the ball joint of the drag link was in worn out condition: 'If you screw a nut to hold it to the drop arm, it would not hold. The whole tie-rod ought to have been changed.'

The second question suggested was whether the lorry had been sent for repairs at all before the accident. The first and third defendants claimed that the second defendants had issued an invoice after the repairs, but this invoice was never produced and was said by the first defendant to have been handed by him on the day of the accident to the Sepoy Lines police, a statement which was not clarified later in any way. As against Cheng Kuang Bong's claim that he had changed the drag link and put in a 'nyloc' nut without a split pin because there was no provision for a split pin, the photographs of the drag link of the lorry taken after the accident clearly showed a provision in the drag link for a split pin. Equally significant was the evidence of Foo Yin Fatt (PW3), the police mechanical engineer who was an independent witness. In his report, he said that as far as he could recall the drag link could not have been new. But the thread at the ball joint was intact, with no visible damage to the thread. If the nut had been forced out in any way, the thread would have been damaged, and his firm conclusion was that the nut was removed after the collision.

As the accident took place in 1981, many years before this action came on for hearing, it was inevitable that memories had become blurred by the passage of time, and a considerable amount of detail in the evidence of witnesses was not as satisfactory as it should have been. Much of the evidence was also self-serving, even if it was not untrue. This made it all the more difficult to tread a logical path through the contradictions in the evidence. In such cases, a court has no alternative but to piece together the contrasting picture to the extent possible, making such allowances for inaccuracies and obscurities as would be reasonable in the circumstances.

In my judgment, the lorry was sent to the second defendants for the stiffness in the steering to be attended to. It was found on examination that the stiffness was the result of a lack of oil in the steering system, and accordingly all that the second defendants did was to add some oil to the system. This was sufficient to cure the stiffness, and to enable the first defendant to drive the lorry normally and without complaint on Tuesday 17 March 1981 before the accident. The drag link or the tie-rod was not changed when the steering was repaired, contrary to the evidence of Cheng Kuang Bong, who claimed that he put in a new drag link without a provision for a split pin to be used, when the photographic enlargement of the part in the damaged lorry clearly showed a drag link with such a provision. There was no evidence that it was necessary to change the drag link, and the evidence of all the technical witnesses — Foo Yin Fatt, the police engineer; Denis Packard, the first and third defendant's expert; and Yan Fook Sum, the insurance company's assessor and surveyor — was that the drag link or tie-rod found on the lorry after the accident could not have been new.

When the lorry was taken back from the second defendants on Monday 16 March 1981, the drag link must have been secured to the drop arm by both a nut and a split pin. In my judgment, the lorry could not have been driven before the accident on the following day for some five hours and some 80km relying on the 'jamming effect' alone. Neither can I find that the drag link and the drop arm were somehow forced apart, and thereby resulted in the steering failing. The parts of the thread on the shank, albeit worn, were sufficiently visible in the photographic enlargements to suggest that the thread had not been damaged in the way it undoubtedly would have been if the drag link and the drop arm had been forced apart, either before the accident or even by the impact of the collision. The nut and split pin were found to be missing after the collision, and the only logical inference to draw was that the nut and split pin were removed after the collision. It was not disputed that it would take an ordinary person only about five minutes or so to remove the nut, and a mechanic would take less than that time if the right tools were available. Yan Fook Sum (DW6), the automobile surveyor and assessor, found that the appropriate tools — nut opener, pliers — were available in the lorry itself. After the nut and split pin were removed, a blow with a hammer or spanner would separate the drag link and drop arm, as Cheng Kuang Bong demonstrated. Cheng Kuang Bong however was an uncertain and unsatisfactory witness. On this occasion, contrary to usual practice, he was either sent by Tay Kim Beng, the supervisor, or went in response to a request from the first defendant that he go to the scene of the accident. Whoever it was who sent him to the scene, he went because he was told that the driver had complained that the steering failed at the time of the accident. He arrived at the scene of the accident in some haste, only 10 to 15 minutes after the telephone call from the first defendant and well before any of the police arrived. He removed the nut and pin, and disconnected the drag link and drop arm. He could have done this to avoid any suggestion that he had not carried out the repairs properly; more likely, because a person had been killed, he wanted to protect their customer and show that the accident was the result of some mechanical failure. Whatever his reason was, it was a stupid thing to do, because it could have resulted in his own firm becoming liable. It led to the production of a

large bundle of accounts and invoices, bills and receipts which were unreliable and unhelpful as evidence. It also led to the mystery of the missing nut and split pin diverting attention from the real issue in this case and taking up a lot of court time.

I now turn to the question of what in my judgment was the actual cause of the accident and who was the person liable for it. The first defendant claimed that he was travelling normally at a speed of 30 km/h just before the accident, and that the relatively slow speed was because of the speed regulating strips on the road. The relevance of the speed regulating strips was contradicted by the evidence of the police investigating officer, Inspector Roger Yeo Kong (PW4), under cross-examination in the coroner's court inquiry:

Q: At scene of accident just before the actual bend was there speed reducing strips there?
A: No.
Q: Any one of these nearby?
A: No. They are quite far from scene of accident.

The police sketch plan showed very long brake marks of 10.3m and 12.1m which in the circumstances at the time suggested a violent and desperate braking at a very considerable speed, well in excess of the maximum speed limit of 50km/h along Tampines Road at that time. There could not have been any other explanation for these brake marks other than the very considerable speed at which the lorry was travelling when the brakes were applied, as the lorry was not loaded at that time. From these marks, the lorry appeared to have veered first to the left, and then to the right, and finally to have come to a stop only when it hit the motor car of the deceased, leaving long brake marks. When the first defendant realized that the lorry was veering to the left because of the speed, and was about to hit the curb on the left, he swerved the steering to the right, applied the brakes, and lost control. This was clearly negligence on his part, and vicariously on the part of his employers, the third defendants, for which they were liable in damages to the plaintiffs.

Damages

At the date of his death, the deceased was 32 years of age. He left a widow and two very young sons, one born in March 1977 and the other in February 1981. He was a lieutenant in the Singapore Armed Forces Commandos earning $1,216.98 per month. He had a secondary education up to Middle School III at the Chinese High School in Segamat in Malaysia. This would be below the GCE 'O' level. He joined the SAF on 27 May 1971 and in the normal course his term of service would expire on 11 March 1999. He joined on another rank and had been promoted second lieutenant in March 1975, and to lieutenant in April 1977. His previous commanding officer Lieutenant-Colonel Boon Hon Lim who had known him since his joining the SAF said in evidence that he had in 1981 a potential rating to become a lieutenant-colonel, but he could not say when this might come about, because 'you cannot guarantee promotion'. Assessment of an officer for purposes of promotion was at three levels — unit level, formation level, and army commander level, and all three levels would have to approve any junior promotion. According to the widow, he gave her by way of support $750 per month, out of which he consumed food at home to the value of only $50 per month because he only had occasional meals at home, so that the net loss of dependency to her was $700 per month.

Estate's claim

The cause of action having arisen in 1981, the claim for the estate of the deceased was made under s 8 of the Civil Law Act (Cap 30, 1970 Ed) before the coming into force of the 1987 amendments. There was no evidence as to whether the deceased was conscious or unconscious after the accident and before he was pronounced dead about an hour later, and I therefore award no amount for pain and suffering. For loss of expectation of life I award the conventional amount of $7,000. For the loss of future earnings in the lost years, I am of the opinion that it would be fairer to base this on a retirement rank of major, rather than a rank of captain or lieutenant-colonel on the evidence available. I have therefore based my calculation on the median of his pay at the date of the accident of $1,216.98 and a major's pay on retirement of $4,055 to arrive at the figure for his probable lost earnings. After making deductions for income tax, adding back the employer's CPF contributions, and taking an available surplus of 40%, I have applied to the resulting mutliplicand a multiplier of 14 and rounded up the figure to $215,000 for loss of future earnings. Accordingly, I award a total of $222,000 on the estate's claim.

Special damages

These have been agreed at $7,000 to cover the funeral expenses, damage to the deceased's motor car, and a vehicle inspection report fee, which were claimed.

Dependants' claim

The widow and the two children were wholly dependent on the deceased for support, and by his death they have been deprived of this support. After his death, the family was awarded by the Armed Forces Council a lump sum gratuity of $45,000 as his death was considered as a result of service; additionally, the widow has been awarded a monthly pension of $311.67 while she remains unmarried, and each of the two children receives $62.33 per month which will continue until he reaches the age of 18 years or becomes self-supporting.

These payments by the Armed Forces Council, however, must be disregarded in considering the dependants' claim in this action in view of s 12(3) of the Civil Law Act. It is not disputed that, before his death, the deceased gave the widow $750 per month, out of which the cost of his occasional meals at home was estimated at $50 per month, leaving the widow $700 per month for the support of herself and the children. Some allowance must be made for increases in his take-home pay in the period between his death and the date of judgment following trial, and an average figure of $1,000 per month is in my judgment a fair assessment of the loss of pre-trial dependency. This will amount to about 117 months or about $117,000. As with the estimate of pre-trial loss, the estimate of future loss of support is fraught with difficulties, but the court must do the best it can on the evidence before it. Taking into account his promotion prospects and resultant increased earnings, the proportion of his earnings which he has been giving to his dependants, and the fact that the two children were born in 1977 and 1981, I assess the future loss of support of $1,500 per month with a multiplier of 7, amounting to $126,000.

In the present case, a composite claim of a lump sum of $120,000 was also made by the plaintiffs in respect of 'loss arising out of benefit of pension, gratuity and CPF'. As the claim was of a considerable amount, and I was only referred in the written submission to a passage in the judgment in *Parvathy* v *Liew Yoke Khoon*[1] which was not particularly relevant, I asked all counsel to make further submissions on this claim. In the result, the plaintiffs' counsel referred me in his further submission to the evidence of Ang Swee Loh (PW2) who gave evidence for the Personnel Affairs Department of the Ministry of Defence. He had stated in his evidence that, when a captain retired at the age of 50, his full pension would be $24,101.80 per year. He could also opt for the alternative of a gratuity of $120,590 and a smaller pension of $1,205.09 per month. If he was promoted beyond the rank of captain before retirement, the corresponding amounts would be proportionately higher. At the retirement age of 50, the life expectation of a male Singaporean at that age would be a further 22 years. On CPF, I was referred to the case of *Singapore Bus Service (1978) Ltd* v *Lim Soon Yong*[2] which was followed by me in *Lee Wee Hiong & Ors* v *Victor Koh Ai Sai & Ors*.[3] In *Lee Wee Hiong*'s case[3] I merely referred in the context of that case to the fact that any calculation of CPF contributions which had been lost in those circumstances could be a frustrating exercise, and that the court would have to assess a reasonable sum from the given facts, bearing in mind that the dependants would now get accelerated payment.

I have considered at some length the claims for loss of pension, gratuity and CPF. Claims for loss of pension rights and other post-retirement earnings have been admitted in the past in the case of living injured plaintiffs. In *Lai Chi Kay & Ors* v *Lee Kuo Shin*[4] it was not disputed that the plaintiff had suffered this loss, and by consent a formula was adopted which gave the plaintiff the equivalent of two years' pension amounting to HK$46,000 or S$23,000 at the exchange rate then prevailing. In principle, therefore, if a claim can be proved, there appears to be no reason why the estate should not be allowed to claim for loss of pension rights, or why dependants should not also be entitled to claim for any loss of support which they would have derived from a pension, gratuity or other post-retirement income which the deceased would have received, had he not been killed. In *Nani* v *WG Williams*,[5] general damages were awarded by the High Court in Penang for loss of pension and for loss of gratuity, but the judgment did not have to deal with the principles on which liability was founded. Although the defendants in that case initially lodged a notice of appeal against the whole of that decision, the appeal proceeded later only on the quantum of damages, and the judgment was therefore confined to that issue.

The problem for both the court and the parties in dealing with a claim for loss of pension, gratuity and CPF contributions is the practical difficulty of proving the claim and assessing the damages to be awarded. For a claim to succeed, the plaintiff must discharge the burden of proof required, so that at the least the claim will not be considered to be too remote and speculative. It is one thing when an injured plaintiff is living, and the difference can be readily ascertained between the amount of the reduced pension which he is receiving and the amount which he would have been receiving had he not been injured. But it is another thing when the deceased is killed at an early age; the whole claim for loss of future earnings is in the realm of speculation, and any attempt to justify it by making the usual allowances for contingencies and the vicissitudes of life is really an exercise in futility. In *Mariayee & Anor* v *Mohamed Nasir & Anor*,[6] in which the facts were not the same, the judgment of the Malaysian Federal Court, in dealing with a claim over the loss in the amount of pension, included the following paragraph:

> Now, the deceased was 32 years old when he was killed in 1981 and it would take another 18 years before he reached the optional retiring age of 50. In answer to the submission of learned counsel for the plaintiffs we would like to repeat what Lord Scarman said in the case of *Ratnasingam* v *Kow Ah Dek* [1983] 2 MLJ 297 at 301 that learned counsel had 'grossly exaggerated the present capital value of these distant benefits lost as a result of the accident. None of them would have materialized until the deceased had reached the optional retiring age of 55 and there was an element of uncertainty, not only as to the prospect of promotion' but other contingencies in life. In our judgment, having regard to these factors, the trial court would be moving into a world of unreal speculation if it were asked to perform such a difficult task.

In *Chan Heng Wah & Anor* v *Peh Thiam Choh & Anor*[7] a claim by the estate of a 20-year old medical student for loss of pension was denied by the High Court. Chua J said at p 179:

> The first plaintiff also claims for pension and gratuity. In my view it should not be allowed as it is highly speculative and too remote. The deceased might not live to 60 years of age; she might have married, have children and resign from the Service and go into private practice.

Pensions are in fact the creations of statute, and in considering a claim for loss of pension, regard must first be had to the particular statute governing the award or grant of the pension.

In the case of an officer in the Singapore Armed Forces, such as the deceased, his claim to a pension or a gratuity would be governed by the Singapore Armed Forces Act 1972 as amended, and the Singapore Armed Forces Pensions Regulations 1978. Regulations 3 and 4 read as follows:

> 3 The Armed Forces Council may grant to members of the Singapore Armed Forces and to their dependants or personal representatives pensions, gratuities and other allowances in accordance with the provisions of these Regulations.
>
> 4(1) No member or other person shall have an absolute right to compensation or to any pension, gratuity or other allowance under these Regulations nor shall anything in these Regulations limit the right of the Armed Forces Council to dismiss or to terminate the services of a member without compensation.
>
> (2) Where it is established to the satisfaction of the Armed Forces Council that a member has been guilty of negligence, irregularity or misconduct it shall be lawful for the Armed Forces Council to reduce or altogether to withhold or cancel the pension, gratuity or other allowance for which the member would have become eligible but for the provision of this regulation.
>
> (3) The Armed Forces Council may cancel, withhold or reduce a pension, gratuity or other allowance granted to a member if it is established to the satisfaction of the Armed Forces Council that such pension, gratuity or other allowance has been obtained by the wilful suppression of material facts or has been granted in ignorance of facts which, had they been known before the retirement of the member, would have justified a reduction in his emoluments or resulted in his dismissal or discharge from the Singapore Armed Forces.
>
> (4) Where a pension, gratuity or allowance has been cancelled, withheld or reduced under paragraph (2) or (3), the Armed Forces Council may at any time, if in any case it considers it equitable to do so, grant or restore the whole pension, gratuity or allowance, or a portion thereof.

On a officer qualifying for a pension by his retirement after the successful completion of his service, it is entirely in the discretion of the Armed Forces Council to grant to him a pension, or gratuity or other allowance. The Council's powers are very extensive, and the Council may for good cause cancel, withhold or reduce a grant, or subsequently restore it in whole or in part. This being so, there would have been in my opinion no right or entitlement to a pension or gratuity vested in the deceased which would have enabled the personal representatives to base a claim against a tortfeasor either on behalf of the estate or for the benefit of the dependants. A claim to a pension at the age of 50 in respect of a 32-year old lieutenant in the Commandos would simply have been too remote and speculative. It is true that in this case the Council granted a gratuity of $45,000 to the family, a pension to the widow, and allowances to the two children; but these were payments which were made under other provisions in the Regulations which specifically provide for such payments to be made (see reg 30), and cannot affect the position in respect of the deceased's claim. As there was no acceptable evidence before the court by which any loss of pension or gratuity could be capable of being estimated, I have not made any award under this head.

On the loss of the employer's CPF contributions, I was referred to *Lee Wee Hiong*'s case[3] in which I said;

> In my view, the principle that the loss attributable to the cessation of contributions to the CPF forms part of a dependency claim can no longer be in doubt since the Privy Council decision in *Singapore Bus Service (1978) Ltd* v *Lim Soon Yong* [1985] 2 MLJ 267, dismissing an appeal from the decision of the Singapore Court of Appeal. Any calculation of CPF contributions which have been lost in such circumstances can be a frustrating exercise: even where the initial problem of estimating the future salaries is reduced, as in this case, there have been several significant variations in the rates of the respective contributions even during the period from 1 July 1980 to the date of hearing. Nevertheless it is possible to make a calculation to arrive at an appropriate figure, bearing in mind that what is arrived at is the accelerated receipt of a lump sum which should be discounted.

It is of course for the plaintiffs, as the claimants, to prove the loss of such contributions and their quantum. It is not for the court to take on the primary responsibility of making the calculations which would be necessary to quantify any such loss. In the present case, the claim for the loss of the employers' CPF contributions was in fact lumped into the composite figure of '$120,000 for pension, gratuity and CPF', which appeared to have been submitted more in hope than in conviction. The plaintiffs' bundle in their further submission contained the successive Central Provident Fund (Government Employees) Regulations issued over the years, together with a letter dated 10 September 1990 from the Central Provident Fund Board containing some rather inconclusive calculations on this claim. As it has not been possible in this case for me to arrive at any reliable figures on the evidence before me, I have also refrained from making any award under this head.

Section 9 of the Civil Law Act empowers the court to award interest on damages. In the present case, interest should be calculated at 6% pa on the amounts for

loss of expectation of life, and for special damages, from the date of the issue of the writ, 7 September 1983. Interest should be calculated at 3% pa on the amount of damages for pre-trial loss of support from the date of the accident, 17 March 1981.

As the dependants are also the same beneficiaries of the estate, the awards to them as dependants will be reduced in each case by the respective amounts received through the estate as beneficiaries. The special damages should be paid to the widow. For the purpose of complying with s 12(4) of the Civil Law Act, the damages awarded in respect of the dependants' claim should be divided as to two-thirds to the widow and as to one-sixth to each of the two children, for whom the widow rather than the Public Trustee shall hold in trust.

There will also be an order as to the costs of the plaintiffs to be paid by the first and third defendants.

Summary of Damages

Estate's claim	$
Loss of expectation of life	7,000
Lost years' earnings	215,000
Special Damages	
Funeral expenses, damage to motor car and vehicle inspection report fee (agreed)	7,000
Dependants' claim	
Pre-trial loss of support at $1,000 per month × 117	117,000
Future loss of support at $1,500 per month × 7 years	126,000

Order accordingly.

Solicitors: *Murphy & Dunbar; TS Tan; Yeo Kee Chin & Co.*

Reported by *Azra Moiz*

MALAYSIAN REPORTS

Syarikat M Mohamed v Mahindapal Singh & Ors

HIGH COURT (KANGAR) — CIVIL SUIT NO 22-23-1988
KC VOHRAH J
9 JANUARY 1991

Civil Procedure — Order of committal — Breach of injunction — Motion for contempt of court — Need to comply with procedural rules — Rules of the High Court 1980, O 52

The plaintiffs applied by motion for an order to commit the first and second defendants to prison for contempt of court for breach of injunction. In the statement accompanying the notice of motion the plaintiffs simply set out that the defendants had failed to disclose the assets of their firm.

Held, dismissing the plaintiffs' motion:

(1) The grounds on which an order of committal is sought must be set out in the statement accompanying the notice of motion. This information must be set out with sufficient particularity to enable the person alleged to be in contempt to meet the charge. Since committal proceedings are quasi-criminal proceedings and the liberty of the subject is involved, these procedural rules must be complied with and be strictly enforced.

(2) The plaintiffs' statement in the notice of motion did not contain sufficient information as to what the alleged breach was about.

(3) Although the plaintiffs had set out the full facts in the affidavit of Moiz Tahir Ali, this was a wholly separate document and could not supply the missing grounds which were required to be set out in the statement.

[Bahasa Malaysia summary

Plaintif telah memohon menerusi usul perintah pengkomitan terhadap defendan pertama dan kedua kerana menghina mahkamah dengan mengingkari injunksi. Dalam pernyataan yang dikemukakan bersama notis usul itu, plaintif hanya menyatakan bahawa defendan telah gagal mendedahkan aset firma mereka.

Diputuskan, menolak usul plaintif itu:

(1) Alasan-alasan atas mana perintah pengkomitan dipohon mesti dinyatakan dalam pernyataan yang dikemukakan bersama notis usul. Informasi ini mesti dinyatakan dengan cukup terperinci untuk membolehkan orang yang didakwa menghina mahkamah membela dakwaan itu. Memandangkan yang prosiding pengkomitan berupa quasi-jenayah dan melibatkan kebebasan seseorang, aturan-aturan prosedur mesti diikuti dan dikuatkuasakan dengan tegas.

(2) Pernyataan plaintif di dalam notis usul tidak meliputi informasi yang cukup tentang keingkaran yang didakwa itu.

(3) Walaupun plaintiff telah menyatakan fakta yang penuh di dalam afidavit Moiz Tahir Ali, ini adalah satu dokumen yang berasingan dan ia tidak boleh memberikan alasan-alasan yang tidak wujud yang wajib dinyatakan di dalam pernyataan itu.]

Cases referred to

1 *Chanel Ltd* v *FGM Cosmetics* [1981] FSR 471 (refd)
2 *Chiltern District Council* v *Keane* [1985] 2 All ER 118 (folld)
3 *Harmsworth* v *Harmsworth* [1987] 3 All ER 816 (refd)